

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of Opening Statements before The
10 Honorable James O. Browning, United States District
11 Judge, Las Cruces, Dona Ana County, New Mexico,
12 commencing on January 31, 2018.

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1 THE COURT: All right. Good morning
2 everyone. I appreciate everyone being here and ready
3 to go. I don't think the jury is quite here yet, so
4 why don't I see if there is anything we need to
5 discuss. Is there anything else I can do for you,
6 need to do?

7 MS. JACKS: Your Honor, I think there was
8 one thing that we wanted to put on the record that we
9 failed to do last night and that was just the
10 observation that when the jurors were brought in and
11 seed two of the jurors were visibly emotional and
12 crying. I don't have my list but I'll tell you which
13 two.

14 THE COURT: While you're looking for that,
15 Ms.

16 MS. JACKS: Let me put a letter on the
17 record that we had discussed at the bench during voir
18 dire with Mr. Dixon. He's juror number 7 on the
19 front row. He's from Albuquerque we had his letter
20 from his employer seeking his excusal. I'm going to
21 have that marked as Clerk's Exhibit D to the Clerk's
22 minutes.

23 All right Ms. Jacks.

24 MS. JACKS: Thank you Your Honor, the two
25 jurors that were visibly crying and emotional when

1 they were informed that they were actually on the
2 jury is a juror seated in the number 2 position, Dora
3 Quinones. And the juror seated in the number 4
4 position, Nora Harris. And I observed that. I also
5 believed Mr. Lowry observed that as well.

6 THE COURT: All right. I had supper last
7 night with Ms. Wild. I called her from my phone and
8 said how is the jury because she meets with the jury
9 before she leaves. And she said they were a good
10 lunch that they were doing well. I don't know if
11 anybody would use the words excited to be back there,
12 but that they were doing well, because I was
13 concerned about you know a little bit I don't want to
14 call it shock but a little bit of the reality that
15 they're about to serve for six to eight weeks. So I
16 then had supper. My wife and I with Ms. Wild, and I
17 repeatedly said is that jury okay? She said it's a
18 good bunch. So let's watch them, let's see what
19 happens I care greatly about them, I know we all do,
20 so we'll keep an eye on them. But Ms. Wild, I said
21 is anybody upset? Are they doing okay?

22 For your information we got about 7 from
23 the north, 11 from the south, I haven't mentally
24 broken it down to see if, once we send them back, if
25 it's going to be a little bit more even. 6, 6. But

1 right at the moment we've got more people locally
2 interestingly only one from Las Cruces, so. We've
3 got some people that are traveling, but. From I
4 think it's as far as I can tell everybody is doing
5 okay. But let's watch them monitor them I'm
6 concerned about them too, but I was told. Anything
7 else we need to discuss. Anything else I can do for
8 you Ms. Jacks.

9 MS. JACKS: I think there is one other
10 thing that we discussed among ourselves and that is
11 the Government has indicated that its first witness
12 is going to be Special Agent Acee. And Mr. Acee
13 hasn't been designated as an expert I'm not quite
14 sure what he's being called for this morning, but we
15 would ask for just a brief offer of proof as to the
16 topic or the purpose of his testimony so we can make
17 sure to make any appropriate objections.

18 THE COURT: Mr. Castellano are you calling
19 Special Agent Acee.

20 MS. CASTELLANO: Yes, Your Honor he's going
21 to provide an overview of the investigation and
22 therefore an introduction to the SNM Gang how he got
23 here today. He's not going to be offering any expert
24 opinions. We will be introducing photographs of SNM
25 Gang members including their tattoos including the

1 defendants, so we'll have those exhibits introduced
2 through him and that's pretty much it.

3 THE COURT: Okay and he's going to be if I
4 understand he's going to be called several times
5 throughout your case.

6 MS. CASTELLANO: That's correct, Your
7 Honor.

8 THE COURT: So he may be on for -- not days
9 here, but a short period of time and then move on to
10 other people?

11 MS. CASTELLANO: Yes. And related to that
12 topic. I know that in the motions practice and in a
13 Touhy request defendants had requested information
14 about two civil suits in which Agent Acee was
15 mentioned. I just want to make sure that there is no
16 cross-examination involving those. I don't think
17 there is any good faith basis to inquire into those
18 matters especially since there were no findings
19 entered against Agent Acee so I want to make sure
20 that the defense doesn't try to poison the jury with
21 any of that information. I think it's irrelevant.

22 THE COURT: Anybody intend to bring up the
23 civil lawsuits? Ms. Jacks, do you know?

24 MS. JACKS: I don't know. I can only speak
25 for myself and I'm certainly not bringing those up

1 date. I if anybody brings them up approach the bench
2 because maybe we discussed this but I'm not real
3 familiar with it so I'll need be a little bit
4 educated on it.

5 MS. JACKS: I guess the one thing I hear
6 what Mr. Castellano is saying. I'm not sure if he's
7 offering Mr. Acee to testify that person A, B, or C
8 is an SNM Gang member. If that's the case I'm not
9 quite sure what that's based on would it appear to be
10 hearsay unless somebody has admitted it directly to
11 Agent Acee and then there would be I think an Sixth
12 Amendment issue so I'm not clear on exactly how the
13 Government is going to examine him on that.

14 THE COURT: Are you going to try to use --

15 MS. CASTELLANO: No.

16 THE COURT: No, he's not going to do that.

17 MS. CASTELLANO: He's not going to state
18 those opinions he will talk about the tattoos, and
19 trends he has seen among the tattoos of the people
20 photographed but he's not going to render those
21 opinions I okay let me start with the Government.
22 Anything else we need to discuss before we bring the
23 jury in.

24 Anything else I can do for you, Ms. Armijo?

25 MS. ARMIJO: No, Your Honor.

1 THE COURT: How about any of the
2 defendants? Anybody else have anything?

3 MR. VILLA: Your Honor, I know -- I'm
4 sorry.

5 THE COURT: Let me get Ms. Duncan since she
6 was moving toward the podium, then I'll come back to
7 Mr. Villa.

8 MS. DUNCAN: I know the Government is going
9 to introduce some exhibits today. I wonder if we
10 could get exhibit the numbers in case we have
11 objections, we're not spending too much time at the
12 bench.

13 THE COURT: Are you able to do that,
14 Mr. Castellano?

15 MS. DUNCAN: We do have the exhibits.

16 MS. CASTELLANO: I'll give them on the
17 break. I have a stack photographs and they're
18 welcome to look at them.

19 THE COURT: Does that work for you, Ms.
20 Duncan.

21 MS. DUNCAN: You think he'll give me a
22 list?

23 THE COURT: Show you at the break. Does
24 that work?

25 MS. DUNCAN: Yes.

1 THE COURT: Mr. Villa, what did you have?

2 MR. VILLA: I know this was talked about on
3 pretrial, but I want for the record the rule to be
4 invoked.

5 THE COURT: I've got it right here. So you
6 want to invoke it now or do you want me to ask on the
7 record and let you invoke it in the presence of the
8 jury what would you prefer?

9 MR. VILLA: I'd like to invoke it now.

10 THE COURT: So I'll just instruct the jury
11 if nobody wants to invoke it publicly, I'll just make
12 the statement to the jury before openings begin.

13 What else from the defendants? Mr. Lowry,
14 you had something?

15 MR. LOWRY: Well, Your Honor, should we
16 turn the podium before the jury comes in.

17 THE COURT: It's up to y'all. If y'all
18 want to readjust the podiums, that's y'all's
19 business.

20 MS. ARMIJO: I tried this morning and the
21 most it can go which may be fine for the defense is
22 right here. It wasn't comfortable for me, and so I
23 think I'm going to just have to stand because I was
24 told that this cannot be moved. So it's literally.
25 That's what I.

1 THE COURT: And who told you that?

2 MS. ARMIJO: Ms. Standridge.

3 THE COURT: Okay.

4 MS. ARMIJO: They said that IT would have
5 to come in and move things.

6 THE COURT: Is that true? Can they get any
7 flexibility out of that. He'll check and see if he
8 can get any flexibility. If he can you tell him what
9 you'd prefer. While y'all are adjusting that, can I
10 confirm the order of the openings, what Ms. Wild told
11 me it's Mr. Sanchez, Mr. Herrera, Mr. Perez and then
12 Mr. Baca; is that the order?

13 MS. BHALLA: Yes, Your Honor.

14 MR. VILLA: Yes Your Honor.

15 THE COURT: Is that better for you Mr.
16 Lowry?

17 MR. LOWRY: I'm trying to get a sense of it
18 Your Honor. It's fine for me.

19 MR. VILLA: You have the attorneys for each
20 team that are giving the openings.

21 THE COURT: Let's see for Mr. Sanchez is it
22 Mr. Jewkes.

23 MR. JEWKES: Ms. Jacks will be making the
24 opening Your Honor.

25 THE COURT: Ms. Jacks, all right. I'll

1 change that. And for Mr. Herrera it's going to be
2 Mr. Maynard; is that correct? Are you going to give
3 the opening?

4 MR. MAYNARD: It will be Ms. Bhalla.

5 THE COURT: Ms. Bhalla I and for Mr. Perez.
6 It's going to be Ms. Fox-Young.

7 MS. FOX-YOUNG: That's right, Judge. And
8 then for Mr. Baca it's going to be Mr. Lowry.

9 MR. LOWRY: That's correct, Your Honor.

10 THE COURT: Ms. Armijo, you're up first.
11 Does that work for you. Is that better?

12 (A discussion was held off the record.)

13 THE COURT: All right. Does this work for
14 you Ms. Armijo? All right everybody ready?

15 All rise.

16 (The jury entered the courtroom).

17 THE COURT: All right. Everyone be seated.

18 Good morning, ladies and gentlemen. Thank you for
19 being here on time and ready to Government I
20 appreciate it. Last night before Ms. Wild headed
21 back to Albuquerque I called her on the phone and
22 asked is everybody okay, and she said everybody
23 seemed to be okay, and she didn't use the word
24 excited but she said y'all were okay and she said you
25 were a great bunch. She said I would enjoy working

1 with you and that y'all were a really good bunch
2 already, and we appreciate what you've already done
3 for us, thank you for being back and ready to
4 Government I appreciate the counsel being ready to go
5 so we can keep things going today and keep it
6 on-track. The rule has been invoked in this case.
7 And what that means it is a rule of law that
8 witnesses may be excluded from the courtroom so that
9 they cannot hear the testimony of other witnesses.
10 This rule does not apply to party or expert witnesses
11 the rule of exclusion has been invoked in this case
12 and all witnesses to whom the rule applies will be
13 required to remain outside courtroom until they are
14 called to testify. Witnesses excluded from the
15 courtroom should not discuss with other witnesses
16 their testimony before they or the other witnesses
17 testify, but they may discuss their testimony with
18 the lawyers.

19 All right, Ms. Armijo, does the Government
20 have an opening statement?

21 MS. ARMIJO: Yes, Your Honor.

22 THE COURT: Ms. Armijo.

23 MS. ARMIJO: Counsel. May it please the
24 Court?

25 THE COURT: Ms. Armijo.

1 MS. ARMIJO: The S is about violence. We
2 get respect through violence. Defendant Daniel
3 Sanchez' view about the Sindicato de Nuevo Mexico,
4 known as the S, or the SNM, the largest prison gang
5 in New Mexico's prison history.

6 During the course of this trial, you will
7 hear testimony about how the SNM was born out of one
8 of the bloodiest riots in United States history in
9 the '80s. They gained in numbers until it eventually
10 became the largest prison gang in New Mexico,
11 controlling the prisons through acts of violence,
12 acts of extortion, and controlling the drugs.
13 Basically, the SNM ran the prisons, in part because
14 of their large numbers.

15 New Mexico Corrections Department had to do
16 something to gain control. And in the late '90s,
17 they created a security threat group, a specialized
18 unit designed to deal with prison gangs. They
19 created a system to validate prison gangs, to
20 officially recognize them as a security threat group,
21 and the SNM was validated as such. And then they
22 also created a system, a classification system, in
23 which gang members were to be housed. They created a
24 level system, and gang members could go no -- not
25 underneath a Level 4, the classifications being Level

1 4 through 6 for gang members. And this was kept to
2 keep the general population of the prisons safe.

3 And so the conflict continued with
4 Corrections and SNM each trying to control one
5 another; SNM using the rule of the prisons against
6 them, SNM using the weakness of correctional officers
7 to bring them in contraband, to find their
8 weaknesses, and to have certain officers assist them.

9 So Corrections will do things like move
10 leaders out of the state, away from gang members.
11 That didn't stop the lines of communication or the
12 leadership. Each prison facility -- and you will
13 hear that about there are various prison facilities
14 throughout the state -- would have members that were
15 leaders. In the old days, you will hear testimony,
16 that there was a tabla, a group of men that would
17 control and actually vote on things. There would be
18 someone that would hold the keys, or the llaves, for
19 different facilities, who would ensure that gang
20 business was being accomplished.

21 The SNM, you will hear, has rules. For the
22 most part, at least one person has to bring you into
23 the gang, stand up for a prospect. You have to do
24 things for the gang or earn your huesos, your bones.
25 While in custody, you have to be willing to commit

1 acts of violence at any time as directed, all in the
2 name of the gang. You have to be willing to assist
3 with the war between prison gangs and correctional
4 officials, because there were other prison gangs that
5 were their sworn enemies.

6 When out of custody, you didn't just stop
7 being an SNM Gang member; you still have to put work
8 out on the streets, whether that be drug activity
9 such as trafficking to assist the goals of the gang,
10 or hitting or killing other rival gang members on
11 sight; and in general, committing crimes of violence
12 such as murder, kidnapping, and other types of
13 witness intimidation.

14 You are a member for life, blood in, blood
15 out, and you do not, you do not, in any manner
16 cooperate with law enforcement, because cooperation
17 of any type will get you killed.

18 You will hear how the SNM has no problem
19 enforcing these rules, even if it means you kill your
20 best friend, your brother, your carnal. The rules
21 are the rules, and you must pay for any violations,
22 and members have paid with their lives.

23 The defendants in this case, you will hear
24 testimony, are all SNM Gang members. Anthony Baca,
25 known as Pup, is the leader of the gang. Daniel

1 Sanchez, known as Dan Dan, one of the leaders
2 underneath Pup. Carlos Herrera, you will hear his
3 nickname is Lazy, another influential member of the
4 gang, leader of the gang. And Rudy Perez, known as
5 Ru Dog, a veteran member of the gang.

6 During the course of this trial, we're
7 going to go back to 2014, and you will hear how
8 Javier Molina, a validated SNM Gang member and an
9 inmate at the Southern New Mexico Correctional
10 Facility, was murdered by his fellow gang members.
11 He was stabbed 43 times with shanks, which you will
12 hear are weapons made in prison. And he never stood
13 a chance to survive.

14 The hit, or the order, had been outstanding
15 for at least a couple years before his death.
16 Paperwork, which is proof that -- of cooperation that
17 is needed to carry out the hit, had been sent down
18 previously at the direction of Anthony Baca as
19 leader. But other members had not followed through.
20 It was based on a statement that Javier Molina gave
21 to law enforcement years before, but time doesn't
22 eradicate a green light, which is an order to kill
23 someone. Because as Rudy Perez states, nobody
24 deserves a free pass on a violation. If they do
25 something serious enough to deserve the violation,

1 they have to accept it, right or wrong.

2 It is important to know that SNM Gang
3 members were held in a building at the Southern New
4 Mexico Correctional Facility, also known as Southern.
5 They were divided up into three pods. There was a
6 yellow pod, a blue pod, and a green pod, all of which
7 were connected with one door, but they housed
8 separate inmates. And each pod contained several
9 cells which housed inmates.

10 And so on March 7, 2014, a
11 well-orchestrated long-standing plan was finally
12 carried out. The day before, on March 6, the
13 paperwork came down for at least the second time to
14 Southern. It was brought down by gang members who
15 were being transferred from up north, from a facility
16 up north, down to the south.

17 You will hear that the members who were
18 down at Southern, the gang members, had been waiting
19 for the paperwork and proof. As soon as it arrived,
20 Lupe Urquizo provided it to Carlos Herrera. And
21 Carlos was in charge of the yellow pod.

22 Herrera reviewed the paperwork and after
23 approving of it, passed it on to the blue pod
24 underneath the doors in between, for the hit to
25 finally be carried out. Because of the paperwork

1 being passed out, people could now act on it.

2 Mario Rodriguez, known as Blue. He's the
3 one that received the paperwork, and at that point --
4 and you will hear from him. At that point, he showed
5 the paper to Daniel Sanchez, who was in charge of the
6 blue pod where Javier Molina was being housed. After
7 reviewing the paperwork, Sanchez put things into
8 motion. He ordered Rodriguez to have Timothy
9 Martinez, who is known as Red, a good friend of
10 Javier Molina's, first go into Javier Molina's cell
11 at the designated time and render him unconscious.

12 Sanchez then wanted gang members Jerry
13 Armenta and Jerry Montoya to do their actual
14 stabbing, in part because they were gang members, but
15 they hadn't earned their bones yet; they had to prove
16 themselves to the gang.

17 Sanchez then went into Rudy Perez' cell.
18 Rudy Perez had a walker and provided a piece of the
19 walker to Mario Rodriguez and shanks were made out of
20 the pieces of the walker.

21 At 4:00 p.m. on the 7th, Corrections
22 conducted the normal count, which you will hear
23 testimony that at every day at 4:00, at that time,
24 inmates have to go into their cells for the
25 correctional officers to literally do a count. And

1 that's what was done. And during that hour-long
2 count, Rodriguez was able to make two shanks out of
3 the pieces of the walker from Rudy Perez.

4 When the doors opened at 5:00 p.m., inmates
5 came out of their cells for tier time, which you will
6 hear is a time for inmates to socialize out in the
7 main area.

8 Around 5:15, Javier Molina went into his
9 cell with Rodriguez and Martinez under the guise of
10 getting high. But as directed, Martinez choked out
11 Molina and he went unconscious. Montoya and Armenta
12 came in as planned and took over and started stabbing
13 him.

14 But Javier was bigger than Montoya and
15 Armenta, and he actually woke up. You will see the
16 video of him coming out of his cell, running down the
17 stairs to the door in an effort to get help. As he
18 was running downstairs with his bloody chest, he told
19 Rodriguez, "I am done, carnal. I am done." Those
20 would be his last words. Rudy Perez would later say
21 about the murder, "We all have our part, you know
22 what I mean? One way or another, homes, everybody
23 has their part, no matter how big or small. If you
24 are asked to do something or whatever, that's what
25 you do, no questions."

1 And the evidence will show that each of
2 these defendants had an important role in this
3 murder, an active role for the murder to be carried
4 out.

5 Now, before 2014 the majority of SNM Gang
6 members were being housed at Southern. Anthony Baca
7 was even housed there for a time period, but he was
8 moved back up to the Penitentiary of New Mexico in
9 2013 after prison officials had received information
10 that his life was in danger, and they acted upon it
11 and moved him up north.

12 Baca was not happy about this decision. In
13 fact, he tried to reason with prison officials about
14 moving him back down to Southern with his prison
15 family, with his familia. And in January and
16 February of 2014, he even met with prison officials.
17 He proposed to them to maintain a peaceful
18 environment down at Southern, to call a ceasefire
19 with rival gang members and put a sudden halt to
20 recruiting, and prevent SNM Gang members from
21 targeting other SNM Gang members who, in his words,
22 wished to subject themselves to the RPP Program,
23 which is the program that prison officials have for
24 inmates that want to leave a gang. However, based
25 upon a meeting that they had with him, the

1 administration refused to give in to his demands.

2 When Corrections refused to send him back
3 down to Southern, the hit was finally acted on at his
4 direction. The S was trying to send a message to
5 Corrections. As a result of the Javier Molina
6 murder, the S was put back down -- put in lockdown,
7 and several members were moved back north and to even
8 more restrictive housing. Baca and Sanchez were
9 moved out of state. Eventually, all of the S would
10 be moved back north, where they would initially be
11 placed in Level 6 housing which is the most
12 restrictive housing.

13 Once again, the SNM was not happy about
14 this lockdown. They thought their rights had been
15 stripped away, and eventually they wanted to make yet
16 another statement, retaliate based on their feelings
17 of mistreatment by prison officials.

18 At the same time, the prison officials were
19 slowly trying to give members more privileges, such
20 as giving them more recreation time, although it was
21 in a solitary fashion; allowing one phone call and
22 one visit a month, eventually increasing it, six
23 months later, to two phone calls and two visits a
24 month, and again, six months later, to four phone
25 calls and four visits a month. And prison officials

1 in July of 2015 actually had town hall meetings with
2 SNM Gang members to inform them that they would be
3 returning them to their normal Level 4 activities.
4 And by that, they would actually get their tier time
5 back.

6 But yet, on the very first day that that
7 was allowed, within hours of being let out -- which
8 they were only being let out four at a time -- Julian
9 Romero, a validated, long-standing SNM Gang member,
10 was brutally attacked.

11 Now, this hit, you will hear, was
12 outstanding. It went back to a fight more than 10
13 years before between Romero and Gerald Archuleta, who
14 is a former gang leader known as Styx. A fight that
15 caused the factions in the S that led to -- factions
16 in the S; a fight that led to Romero actually being
17 shot by a soldier for the S. The issues between
18 Romero and Styx stems from the fact that Romero got
19 out of the prison and became romantically involved
20 with Styx's wife. That is something that is
21 prohibited in the SNM. It's not acceptable for you
22 to steal a member's woman.

23 And so word came down from the leader of
24 the gang that Romero should be hit, the leader at the
25 time being Baca, even after all the time had passed.

1 In this case, he was beaten, not killed; and once
2 again, in 2015, SNM members were back on lockdown.

3 At the same time that all of this was going
4 on, leaders were still upset about the housing
5 situation. Baca is still out of state and the
6 leaders in New Mexico were quite upset about it. In
7 order to make a statement, another plan was created.
8 "We want Gregg Marcantel, Secretary for Corrections,
9 and Dwayne Santistevan to be taken out." A written
10 directive in a letter that Robert Martinez, or Baby
11 Rob, a leader of the SNM at the time, sent to a
12 soldier on the street. The S set out to murder two
13 very important people, Gregg Marcantel, as you heard
14 the head of Corrections, a member of the Governor's
15 cabinet; and Dwayne Santistevan, who you will hear
16 was the head of the STIU, the Security Threat
17 Intelligence Unit at the time. "Get the message
18 out."

19 Baca stated, "We need to make a move, but
20 not any move. We need to go to the top. Marcantel,
21 Santistevan, the wardens; we need to make our
22 presence felt again. Molina was just a building
23 block for bigger jobs, like Marcantel, and get the
24 respect we once had."

25 Fortunately for Marcantel and Santistevan,

1 one of the persons that received the letters to
2 assist in carrying out murders decided to cooperate.
3 SNM members on their own came to officials, wanting
4 to end the violence, to avoid the violence, and to
5 escape the lifestyle.

6 One of the things that I should mention
7 here is that you will hear from SNM Gang members on
8 the stand who will shed light, who will illuminate
9 things that happened in the dark side of prison life.
10 Hard criminals that have been sentenced to hard time.
11 They aren't choir boys. These are men with violent
12 criminal histories who will come in and tell you
13 about the violent crimes that they committed all in
14 the name of the SNM. And you will hear how some of
15 them have pled guilty to murder and other charges,
16 and how they hope that the judge will give them a
17 break eventually for their cooperation. Some of them
18 have even been released, and you will hear about the
19 troubles that they've encountered on the streets,
20 because sometimes it's hard to break old habits or to
21 deal with the weight of it all.

22 And you will hear about all the benefits
23 that they have received from the Government which in
24 some cases includes financial assistance.

25 And so the investigation into the SNM was

1 commenced, and that included moving Baca in 2015 back
2 into the state of New Mexico and putting him next to
3 a cooperator, who would then record him. And
4 eventually, Baca was able to get another SNM Gang
5 member, Christopher Garcia, a drug trafficker for the
6 S who was out on the streets, to give a firearm to an
7 SNM Gang member who was a good soldier for the S, to
8 kill Marcantel. And in late November 2015, a firearm
9 had been given to that person at Garcia's house
10 specifically to kill Gregg Marcantel.

11 Fortunately for Gregg Marcantel, the
12 person, the soldier on the street, that they had
13 trusted had already been working with law
14 enforcement, and so the transaction was recorded and
15 the firearm was not used for its intended purpose.
16 As Baca said, "If they would have let me out, Javier
17 wouldn't be dead. That man would still be alive.
18 But they didn't, and what's done is done. They
19 called my bluff, and now they have a dead man on
20 their hands."

21 So you will learn through the evidence that
22 for SNM, it's all about power and respect. In prison
23 there is one surefire way to get that. That's
24 through fear and violence, and through fear and
25 violence extends to the streets. You will hear

1 Carlos Herrera say, "They fear us because they don't
2 have it in them to kill. They ain't killers. That's
3 the difference between them and us."

4 The SNM wasn't getting respect anymore from
5 Corrections. In their minds, they felt they were
6 losing their power. And so they did what they needed
7 to do. No more just beating up people. It was time
8 for violence, time to make a statement. Time to
9 shank a man 43 times, time to kill the top of
10 Corrections. Time to exert their power to show that
11 they would not give in to anyone. Time to go back to
12 the good old days when the S gets respect.

13 At the end of this trial, we will speak to
14 you again, and when we do, we'll walk through each of
15 the defendants' violent acts, all they have done in
16 the name of the SNM, all done for power and respect
17 and to maintain or increase their position in the S,
18 and ask you to find each of these men guilty.

19 Thank you.

20 THE COURT: Thank you, Ms. Armijo.

21 Ms. Jacks, do you have an opening statement
22 for Mr. Sanchez?

23 MS. JACKS: I do, Your Honor.

24 THE COURT: Ms. Jacks.

25 MS. JACKS: Thank you very much. We have

1 some slides that we're going to use.

2 MS. ARMIJO: And Your Honor, since nothing
3 has been admitted, we will object to anything, since
4 nothing has been provided to us ahead of time.

5 THE COURT: Is this like a PowerPoint?

6 MS. JACKS: It is.

7 THE COURT: We'll see what the PowerPoint
8 is.

9 MS. JACKS: I have a copy right here. You
10 can flip through it, if you like, while we get it up
11 on the screen.

12 MS. ARMIJO: Yes, Your Honor. May we
13 approach?

14 THE COURT: You may.

15 (The following proceedings were held at the
16 bench.)

17 MS. ARMIJO: Your Honor, this is the first
18 time we're seeing it. None of these have been
19 admitted pretrial. It is pictures.

20 MS. JACKS: Those are from the exhibits.

21 THE COURT: Hold on. Let Ms. Armijo make
22 her record.

23 MS. ARMIJO: They are from the exhibits,
24 but the problem is: Nothing has been admitted. We
25 didn't agree to the admission of any of these

1 exhibits.

2 THE COURT: Let me take a look at them.

3 MS. ARMIJO: So we are strongly opposing
4 this. What are these right here? SNM?

5 MS. JACKS: That's what I'm going to talk
6 about. That's a moral compass.

7 THE COURT: Just a demonstrative?

8 MS. JACKS: It is. Once you get past the
9 ones that we've offered in evidence in our exhibit
10 list, they're just demonstrative slides that go along
11 with what I'm going to talk about, what the evidence
12 is going to show, some of which Ms. Armijo referred
13 to in her opening statement of --

14 THE COURT: What is this a picture of?
15 Just a guy?

16 MS. JACKS: Right.

17 THE COURT: Any guy?

18 MS. JACKS: This is a threat. We're going
19 to -- that goes along with the discussion about the
20 threats and promises.

21 THE COURT: These are demonstrative?

22 MS. JACKS: Exactly.

23 MS. ARMIJO: I can't see. I'm too short.

24 THE COURT: I'm just going through them.

25 MS. ARMIJO: I can't see, so --

1 MS. JACKS: You've got a couple inches on
2 me.

3 THE COURT: Well, I think it's okay. These
4 are pretty generic sorts of things, and most of them
5 are just demonstratives. I think it's okay. So I'll
6 overrule the objection.

7 MS. JACKS: Thank you, Your Honor.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Ms. Jacks.

11 MS. JACKS: Thank you, Your Honor.

12 Good morning, ladies and gentlemen. I
13 guess I want to talk about the elephant in the room,
14 to just get started. You know, the trial is just
15 beginning, and there is no evidence. You guys
16 haven't heard one piece of evidence yet. But a lot
17 of you, as you've told us Monday and Tuesday, have
18 heard things about this case and about the
19 individuals that are charged, Mr. Sanchez included.

20 And when I was thinking last night about
21 what I wanted to say to you, I was reminded of the
22 Supreme Court opinion -- a Supreme Court opinion
23 written by Justice Hugo Black. And as the case may
24 be, Justice Black actually wrote one of the opinions
25 in the Pentagon Papers case. And in that opinion,

1 what Justice Black recognized was how important a
2 free press was in exposing government corruption.
3 It's the subject of a movie out. But Justice Black
4 also realized that there was a real tension between
5 the free press and the rights of a criminal
6 defendant. And what he wrote in a different case, a
7 case called Bridges versus California, is up here on
8 the screen, that legal trials are not like elections,
9 to be won through the use of the meeting hall, the
10 radio, and the newspapers. We can go to another
11 slide.

12 He said in that same opinion that "The very
13 word 'trial' connotes decisions on the evidence and
14 arguments properly advanced in open court."

15 And that's what we're here for today. And
16 I guess in talking with you on Monday and Tuesday --
17 I mean, we all realized you're a group of
18 conscientious, thoughtful, fair-minded people. And I
19 would submit to you in the spirit of these comments
20 by Justice Black, that instead of trying the case on
21 what you read in the press, see on TV, get a push
22 notification on your phone, or hear from some clerk
23 in the jury room, let's try this case based on what's
24 presented here in court and the evidence that you're
25 going to hear through the course of this trial.

1 The jury trial, I think as the judge told
2 you the other day, is a key component of our
3 government, and it's been in place for over 200
4 years. And I think we all owe it to ourselves and to
5 our conscience, we owe it to the Court and to the
6 people charged with these very serious crimes to give
7 it our best shot and to make a decision based on the
8 evidence and the arguments that are presented here in
9 this courtroom, the trial.

10 So that being the case, I want to get down
11 to what this trial is about, at least with regard to
12 Mr. Sanchez. And it's about the homicide of Javier
13 Molina at the Southern New Mexico Correctional
14 Facility. I just pulled this off of Google Maps, but
15 where Southern New Mexico Correctional Facility is,
16 it's a little bit south of the 10 freeway and a
17 little bit west of Las Cruces. This is an overview,
18 and you can kind of see the prison facility there,
19 isolated off the freeway exit.

20 The evidence in this case is going to show
21 you that the environment at Southern New Mexico
22 Correctional Facility is austere. This is the
23 housing unit. It called Unit 1-A, B pod, or blue
24 pod, you'll come to know, based on what you see in
25 the evidence. This is the housing unit where Mr.

1 Molina was killed. And we can go to the next slide.

2 It's in an austere environment. The
3 inmates make few decisions for themselves. They're
4 told when to get up, when to go to bed. They're told
5 what they can eat and when they can exercise.
6 They're told what they can wear and when they can
7 have contact or a visit with their loved ones.
8 They're limited in their personal calls and their
9 personal property.

10 This is a typical cell at the Southern New
11 Mexico Correctional Facility. This is in a
12 neighboring pod. It looks orange, but it's called
13 yellow pod. And as you can see, the picture on the
14 left is the entrance to the cell. The picture on the
15 right sort of shows you what you see when you go into
16 the cell. The first thing you come to is a little
17 clothes hamper, or a place where the inmate is
18 supposed to store their personal property. And then
19 there is a little desk.

20 These are three pictures of the inside of
21 the cell. And just opposite the desk area that you
22 see is a combination sink and toilet. And you see
23 the bed, a pallet on a concrete slab.

24 It's an environment of oppression, an
25 environment of control, an environment that's

1 extremely unpleasant.

2 It's also an environment where the inmates
3 are under constant surveillance, constant
4 surveillance from correctional officers. This is a
5 picture -- it's not the greatest picture. You'll see
6 more like it during the course of this trial. But
7 it's a picture of the booth where the officers are
8 and where their surveillance equipment is located.
9 And on the top is basically -- it's like a one-way
10 mirror. The correctional officers are behind that,
11 and the little cutout there you see in the middle is
12 for a gun to be stuck through. In case there is some
13 sort of disturbance, the corrections officers in the
14 booth can fire off various things, beanbags, whatever
15 they need to do to try to control any sort of
16 disturbance.

17 The other thing you'll notice is right sort
18 of along the bottom of the correctional officer booth
19 you see the round things? There's one right above
20 the exit sign. Go a little bit further to the left
21 and you'll see one in the corner. There are some
22 around the corner, too. You'll see those pictures.
23 That's video surveillance. And the unit is under
24 constant video surveillance. Evidence will show that
25 it's recorded and stored in the prison computers.

1 And what that means is, when there is a
2 crime committed on a unit, there is video showing
3 what happened. There are also officers in the booth,
4 if they're paying attention, that see what happened.

5 The charges against Mr. Sanchez involve a
6 stabbing of an inmate named Javier Molina on March 7,
7 2014. We don't need to linger on this slide. We can
8 go forward, but there is no doubt the evidence in
9 this trial will show that Mr. Molina was stabbed on
10 that date at the Southern New Mexico Correctional
11 Facility. And these are photographs of the two
12 weapons that were recovered right after Mr. Molina
13 was stabbed that were, I think you'll hear testimony,
14 used to stab him.

15 The people that stabbed him -- the people
16 that stabbed him are two individuals, and you see
17 their pictures here: Jerry Armenta and Jerry
18 Montoya.

19 Now, I don't know the Government's trial
20 strategy and who they're going to call, but these two
21 have been designated Government witnesses. So the
22 two guys that actually stabbed Mr. Molina are going
23 to come in here and testify as witnesses for the
24 Government.

25 Timothy Martinez. I think Ms. Armijo

1 explained his role a little bit. Timothy Martinez is
2 also going to come in here and take an oath to tell
3 the truth and sit on that witness stand and testify
4 for the Government.

5 Mr. Martinez is the person that
6 incapacitated Mr. Molina so that Armenta and Montoya
7 could try to kill him. Timothy Martinez -- I got a
8 picture there of a tattoo you'll see on his stomach,
9 "Me against the world."

10 And finally, Mario Rodriguez. Mario
11 Rodriguez, as Ms. Armijo told you, is the person that
12 supplied the weapons and sort of supervised the
13 actual killing of Mr. Molina. We expect that you'll
14 also see Mario Rodriguez come into this courtroom as
15 a Government witness, take an oath to tell the truth,
16 and sit up on that witness chair and tell you his
17 story.

18 The evidence in this case is going to show
19 you that Mr. Armenta, Montoya, and Rodriguez were
20 easily and very rapidly identified as the killers of
21 Mr. Molina, and they very immediately started facing
22 the consequences of those actions.

23 Prison is a harsh environment, and you and
24 I have a value system and make decisions based on our
25 values and what's important to us and try to follow

1 those values in living as a good citizen, as a good
2 person. But I would say we operate under a moral
3 compass.

4 Not everyone in prison operates with a
5 moral compass. And in fact, a lot of people in
6 prison have a moral compass that's broken. And when
7 those types of individuals are faced with punishment,
8 punishment like even worse conditions of confinement
9 that they've been living in, possibly further lengthy
10 or life-long incarceration, the evidence is going to
11 show you they begin to look for a way out of it. And
12 the way out of it is a way -- a way that they can try
13 to avoid the consequences of their criminal behavior.
14 And I want to just give you an example, and I think
15 you're going to hear from this person, too. And
16 that's an individual named Billy Cordova.

17 Mr. Cordova, I think the evidence is going
18 to show you, made a deal to become a Government
19 witness in part to avoid being charged as a defendant
20 in this case.

21 I skipped something. Excuse me. My point
22 is, I guess, when these people with a lack of a moral
23 compass or a broken moral compass start calculating
24 what they're going to do to get out of trouble, they
25 have one goal in mind, and that is: What can they do

1 to help themselves? It's all about me.

2 And I want to go back. Mr. Cordova is one
3 of those individuals. And he told us in a pretrial
4 hearing, and I think he'll tell you again from the
5 witness stand, that when he sees a weakness in the
6 system, he exploits it. That's just a day at the
7 office for Mr. Cordova. And I think you'll see
8 that's a mindset that pervades or will pervade the
9 testimony of many of these Government witnesses.

10 As I was saying, the killers, Armenta,
11 Montoya, Rodriguez, they were arrested and charged in
12 state court. What you're going to learn through the
13 course of this trial is: Because of that process,
14 they had access to what's called the discovery, the
15 police reports, the witness statements, the
16 information gathered by law enforcement to prosecute
17 the case, the killing of Mr. Molina. They had access
18 to that information.

19 They also had access to each other, and
20 you're going to hear how the Government witnesses in
21 this case have had continued access to the discovery
22 in the case and to each other, so they can have
23 plenty of time to talk and think about how they're
24 going to exploit the situation.

25 Now, the evidence in this case is going to

1 show you that the homicide of Mr. Molina was
2 essentially investigated by three law enforcement
3 entities. First, the New Mexico Department of
4 Corrections, where the killing occurred. Second, the
5 New Mexico State Police. They're the agency that
6 responded to the prison to immediately handle the
7 investigation of the Molina homicide. And then
8 finally, the FBI became involved. So you have three
9 law enforcement agencies sort of working together to
10 put together the Government's case.

11 What the evidence is going to show you is
12 that members of these various agencies use what I
13 call motivators to induce these Government witnesses
14 to get on board with the story. A motivator, one
15 very powerful motivator, you'll see, based on the
16 evidence, is threats. The other goes hand in hand
17 with threats: Promises. And through the use of
18 these threats and promises, the Government cultivated
19 these witnesses. And what you're going to hear is
20 that not only -- well, Ms. Armijo talked to you about
21 some of the witnesses were provided benefits, and I
22 think she called it financial assistance. There were
23 other benefits provided. But the other thing that
24 law enforcement did, once a witness was on board as a
25 Government witness, you'll see from the testimony, is

1 that they turned a blind eye. They kind of just, you
2 know -- if I don't see it, it's not happening.

3 And after signing up to be Government
4 witnesses, you'll see, based on the evidence, the
5 benefits to these witnesses start rolling in. I'm
6 just going to go through a sampling of the type of
7 things, the type of benefits, that have been provided
8 to Mr. Armenta and Montoya, the stabbers; Mr.
9 Rodriguez. Cash, cash money, thousands, thousands of
10 dollars to the witnesses and their family members.
11 Better access, better conditions of confinement,
12 including access to things like better food. It may
13 not seem like a big deal to you or me, but if you're
14 living in Unit 1-A, B pod, or in some other
15 restrictive prison environment in the state of New
16 Mexico, you can bet that you appreciate that. Access
17 to cellphones while in custody. Internet access;
18 ability to open an email account, chat with people.
19 Government witnesses were provided more visits and
20 contact visits with their family members. Help
21 getting housing when they're released from prison.
22 Promises of future employment as government agents.
23 Pornography. Help getting speeding tickets or
24 traffic tickets fixed. And escape from consequences
25 of other criminal behavior.

1 A trial is supposed to be a search for the
2 truth, and in the search for the truth, the
3 Government is going to bring you this parade, this
4 parade of bought-and-paid-for criminals. And you'll
5 be able to consider or look at the evidence and ask
6 yourself whether these people are corroborated,
7 whether there are things that make their stories
8 true. The evidence is going to show you that on many
9 important points there is a complete lack of
10 corroboration.

11 Let me just say something before we go --
12 before I finish up, because I want to just make an
13 important point. The defense in this case is going
14 to be established really in two ways. One is through
15 the cross-examination of the Government's witnesses.
16 Once the Government presents the witness' testimony,
17 we have a chance to ask them questions. And the
18 other is through the presentation of our own
19 witnesses if we have things we want to present to you
20 by the time that the Government is done with their
21 case.

22 It's not always going to be obvious, as the
23 evidence is presented, what the point is. I'll just
24 tell you that right now. Hopefully, it will be some
25 of the time, but not all the time. And that's just

1 the nature of a trial. And I think that you're going
2 to have to maybe wait to understand the importance of
3 particular details and exactly why a particular
4 witness lacks credibility or lacks reliability. But
5 as Ms. Armijo said, we all get a chance to talk to
6 you again at the end of the trial about what the
7 evidence has shown and try to link up some of the
8 things that maybe aren't so obvious as they're
9 presented.

10 I think in spite of the Government's
11 efforts -- or I should say in spite of the
12 Government's witnesses' effort to mislead you about
13 the truth of the situation in order to avoid the full
14 consequences of their criminal behavior and in order
15 to gain and continue to gain Government benefits, I
16 think the evidence in this case will show you the
17 truth about the charges against Mr. Sanchez. And the
18 truth is, there was no paperwork sent to Southern New
19 Mexico Correctional Facility on March 6, 2014. And
20 the truth is, Mr. Sanchez didn't order anybody to
21 kill Mr. Molina. And the truth is, the killers, the
22 criminals, the Government is going to call as their
23 witnesses -- the truth is, the evidence is going to
24 show you they lack credibility. And the evidence
25 will lead you to the truth, that Mr. Sanchez is not

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1 guilty.

2 THE COURT: Thank you, Ms. Jacks.

3 Ms. Bhalla, do you have an opening
4 statement for Mr. Herrera?

5 MS. BHALLA: Yes, Your Honor. Thank you.

6 THE COURT: Ms. Bhalla.

7 MS. BHALLA: Good morning.

8 Carlos Herrera was born and raised in
9 Albuquerque, New Mexico. And as a young man, he made
10 mistakes, and we're not going to deny that. And he's
11 paying for those mistakes and he's been paying for
12 those mistakes. And part of the way he's paying for
13 those mistakes is that he's serving time in prison.
14 We're not going to deny that.

15 And when Mr. Herrera entered prison as a
16 young man, he joined a gang, like a lot of people do,
17 for protection. And you're going to hear a lot about
18 that during this trial, about why people join gangs
19 and about gang culture and prison culture and how
20 that all works.

21 And part of that means using drugs. But
22 we're not going to ask you to decide whether or not
23 Mr. Herrera was a gang member or a drug user, because
24 he is. What we're going to ask you to decide is
25 whether or not the Government is going to put on

1 enough evidence to show you that he's guilty of
2 killing Javier Molina and whether or not he's guilty
3 of conspiring to murder Javier Molina. And we're
4 going to submit to you that they're not going to give
5 you that proof, because it's not true.

6 I want to talk to you a little bit about
7 the murder of Javier Molina. Ms. Jacks did a good
8 job showing you a picture of the blue pod.

9 I don't know if somebody can bring that
10 back up for me, please.

11 But what I want to show you for that -- and
12 I'm sorry, I didn't prepare her to show me this
13 picture -- that's the blue pod. This is where the
14 murder occurs. Carlos Herrera is not in the blue
15 pod. He doesn't live there. He lives in the yellow
16 pod.

17 And I think if you go to the next slide,
18 you can see the door that separates the two pods.
19 That's the door. There is no window. That's the
20 blue pod, and it separates the yellow pod.

21 How -- I'm going to ask you to think about
22 that when you hear these witnesses' testimony -- were
23 these inmates communicating with each other through
24 these pods? How would Carlos Herrera have any
25 control over what happened in the blue pod?

1 And that's something else you're going to
2 hear about. You're going to hear a lot about prison
3 culture, gang culture, but you're also going to hear
4 that each pod is its own unit, its own entity, it has
5 its own social structure, and different people are
6 looked up to and respected. Different people are
7 known and different people have been around.

8 And interestingly enough, the evidence is
9 going to show you that Mr. Herrera had been in the
10 yellow pod for a pretty long time before the Molina
11 murder. And Ms. Armijo told you that the hit had
12 been outstanding for a long time. It didn't happen
13 for the whole amount of time that Mr. Herrera was
14 next door in the yellow pod. And Ms. Armijo also
15 told you that the leaders got shipped out to PNM
16 North. Mr. Herrera never got shipped out to PNM
17 North.

18 The Government may show you a video of the
19 murder in blue pod. Carlos Herrera is not in that
20 video. The people you're going to see in that video
21 are the people the Government has made deals with,
22 like Ms. Jacks told you: Mr. Armenta, Mr. Montoya,
23 and Mr. Rodriguez.

24 Ms. Armijo also told you about the
25 Santistevan plots and the Marcantel plots. And

1 you're not going to hear any evidence that Carlos was
2 involved in that or had anything to do with it, and
3 he's not charged with any conduct related to that.
4 I'm going to ask you to keep that separate from Mr.
5 Herrera and from our case.

6 But it shows you why the Government got
7 involved, and why they wanted to take out SNM, and
8 why they started working with these people. And it
9 became a situation where they were going to use any
10 means necessary to do what they needed to do to
11 eradicate the SNM. And the easiest people to go
12 after are the people who they can prove did the
13 murders. So their cover is blown; right? Jerry
14 Armenta, Jerry Montoya, Mario Rodriguez are on the
15 video. What do they get out of it if they say, "Oh,
16 yeah, I did it"? They're not going to get a break.
17 The only way they get a break is if they help the
18 Government get the convictions of everybody they can
19 possibly bring into this net. And they cast a wide
20 net, and they start applying pressure. And you're
21 going to hear evidence that some of these witnesses
22 were threatened with the death penalty, and their
23 family members were threatened with prosecutions.
24 People who weren't even in the prison.

25 And the pressure builds. And the

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1 incentives to cooperate become impossible to refuse.
2 The more people you implicate, the better your deal.
3 The more SNM members you get to flip, that you get to
4 cooperate, that you get to become part of our case,
5 the better your deal.

6 And that's why they all got moved together,
7 once they agreed to cooperate, to what the Government
8 has termed the cooperator pod, where they all get to
9 talk, where they all get to share discovery. They
10 have the discovery on their tablets. They get the
11 chance to talk to each other about their stories,
12 about what stories they're going to tell, and about
13 how they're going to help the Government prove their
14 case. And they get rewarded for it. They get
15 rewarded for it.

16 Every single word that comes out of these
17 witnesses' mouths either seals their fate or delivers
18 their salvation. And I submit to you that that's
19 tainted testimony. And there is nothing, outside of
20 these Government witnesses, to corroborate their
21 testimony.

22 And I'm going to urge you to keep that in
23 mind when you listen to the evidence and when you
24 make decisions about assessing credibility and when
25 you make decisions about who is telling the truth in

1 this case. And at the end of the evidence, you will
2 find that Mr. Herrera is not guilty.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Bhalla.

5 Ms. Fox-Young, do you have an opening
6 statement for Mr. Perez?

7 MS. FOX-YOUNG: Yes, Your Honor.

8 THE COURT: Ms. Fox-Young.

9 MS. FOX-YOUNG: May it please the Court,
10 ladies and gentlemen. Rudy Perez was sick in bed in
11 March of 2014 when Javier Molina died. He was almost
12 always in bed in early 2014 and that's because he was
13 very sick at that time. He had had many injuries
14 over the years, and for the better part of a year
15 prior to that spring, he had spent several months in
16 the hospital at the University of New Mexico in
17 Albuquerque. He had had an eight-day -- at least
18 eight-day debilitating seizure. He had no memory.
19 He had spent -- after he was released from the
20 hospital, where he originally was because of a very
21 bad intestinal problem and very nearly died, he spent
22 the better part of the year in a prison hospital in
23 Los Lunas.

24 And so in March of 2014, when he was housed
25 at Southern New Mexico Correctional Facility -- and

1 you've seen an image of that -- it was actually
2 remarkable that he was still alive. And he spent
3 most of his time in bed. He was taking a number of
4 medications. He was taking medications for seizures,
5 he was taking medications for pain, he was taking
6 medications to sleep. And all those medications had
7 a great effect on him. And you don't have to take
8 this from me. You're going to hear evidence in this
9 case from a number of people who treated Mr. Perez
10 and who have reviewed his records. But that's the
11 condition that he was in at this time. It was
12 remarkable that he was alive, and he was trying to
13 stay alive; he was trying to survive.

14 He also had a very difficult time getting
15 around, and he had a walker. Ms. Jacks showed you
16 some photos of that area called blue pod. And you'll
17 see these all again. But she showed what it looked
18 like when you entered a cell. And there is an area
19 where prisoners or inmates could hang their clothing
20 and keep their possessions, right there at the front
21 door. And there is a little laundry hamper that's
22 built into the wall.

23 In Mr. Perez' cell, there was no hamper.
24 That's what they termed the handicapped cell at that
25 time. The prison officials cut that metal hamper

1 out, and that's where Mr. Perez's walker would sit.
2 He couldn't go out -- he really didn't go outside
3 much. He didn't leave his cell much. But when he
4 needed to move around, he had to use that walker. He
5 relied on it completely. And you'll hear about that.

6 Today Rudy is 49 years old, and he's been
7 through a lot. The prosecutor told that you he's a
8 veteran member of the SNM. He's been in prison a
9 long time. You won't hear any evidence that he's a
10 leader. You won't hear any evidence that he was ever
11 moved out of state. You won't hear any evidence that
12 he held keys in a pod. You won't hear evidence that
13 he called out hits.

14 He's been in prison a long time. And his
15 biggest concern, particularly given his physical
16 condition, his physical weakness, and his various
17 medical issues that he fights day-to-day, has been
18 staying alive.

19 You all agreed over the past couple of days
20 to look at each of these men individually, and you'll
21 recall that. I need you to look at Rudy Perez
22 individually, and I'll tell you he is not charged
23 with any of these events involving Mr. Marcantel,
24 Mr. Santistevan. So you're looking at the Molina
25 case when you look at Mr. Perez. And he's charged

1 with conspiracy to murder and murder of Javier
2 Molina.

3 So the rest of this stuff -- and this is
4 going to be a pretty long trial. All this evidence
5 that you hear about folks being moved out of state
6 and negotiation with the Department of Corrections
7 and this long saga regarding the gang and hits on
8 officials -- that has nothing to do with Rudy Perez.

9 The only evidence that you will hear from
10 the Government from inside Rudy's cell on March 7,
11 2014, which is the day that Javier Molina was stabbed
12 by Jerry Armenta and Jerry Montoya, is going to come
13 from one of the killers themselves. That supervisor
14 that Ms. Jacks told you about, Mario Rodriguez.

15 Mario Rodriguez is going to tell you that
16 on March 7, 2014, he saw Mr. Sanchez go in and out of
17 Mr. Perez' cell, Rudy's cell, didn't hear what
18 happened; and that he himself went into Rudy's cell,
19 and that Rudy looked scared. He's going to tell you
20 that. He's going to tell you not that Rudy gave him
21 a piece to use to kill anybody, but that he himself
22 took a piece off Rudy's walker, which I told you Rudy
23 needed to get around; and that he removed it, that he
24 put it in his pants, and that he returned to his own
25 cell to make shanks out of that piece for a murder.

1 Nobody else was in that cell when this
2 happened. You're not going to see video from the
3 Government as to what happened in there, although
4 Ms. Jacks told you that they had that capability.
5 Nobody was there except for Rudy and Mario Rodriguez,
6 and Mario Rodriguez is going to tell you that Rudy
7 was scared. He's also going to tell you that Rudy
8 said that he was down for whatever, as long as it
9 wasn't him. He didn't know if this was going to be
10 used on him. And it was clear to Mario Rodriguez --
11 and you'll be able to deduce this from the
12 evidence -- that Rudy just didn't want to get hurt.
13 He's going to tell you he looked scared. And ladies
14 and gentlemen, that's not somebody who is making an
15 agreement. That's not somebody -- Rudy was not
16 somebody who wanted to help kill another person; not
17 somebody who intended to carry out a murder, to
18 assist in carrying out a murder, or to send a
19 message. Rudy was just trying to stay alive.

20 So this is the story that the Government is
21 going to offer you. And as Ms. Jacks explained, you
22 will see the defense counsel cross-examining
23 witnesses. When we ask questions of the Government's
24 witnesses, we're putting on our case as well, so pay
25 close attention to what we ask and how those

1 questions are answered. You're going to hear that
2 from Mario Rodriguez.

3 You will also hear from the Government's
4 witnesses who investigated after Javier Molina died
5 that Rudy had been threatened and that he would have
6 been killed if he had tried to stop this from
7 happening. When Mario Rodriguez came in and took
8 that piece, if Rudy had said no, he would have met
9 the same fate as Javier Molina.

10 And that's life in prison. You're going to
11 hear a lot about that, and you're going to hear about
12 a prison gang. But that was Rudy's reality on that
13 day: If you get in the way, you're next.

14 Rudy had no choice in that he could not
15 physically defend himself. He was sick, and he was
16 physically incapable of taking this on. So Mario
17 took the piece, and you will hear from him and from
18 others that he then left and went with Tim Martinez,
19 another Government witness, one of the killers, to
20 Javier Molina's cell to get high. The evidence will
21 show you that Tim Martinez choked Javier Molina in an
22 attempt to incapacitate him, and that he was then
23 stabbed by Jerry Montoya and Jerry Armenta over 40
24 times, many times to the heart. Jerry Montoya got on
25 top of Javier Molina and he stabbed him. He then,

1 upon completing the stabbing, threw his shank to
2 Mario Rodriguez, the same guy who went into Rudy's
3 cell, and Mario stuffed it down the shower drain and
4 turned the water on.

5 When all this was happening -- and you're
6 going to hear about this multiple times -- Rudy was
7 in his cell in bed. You're going to hear evidence
8 from other Government witnesses explaining that.

9 After Javier Molina died, everyone in this
10 area of the prison -- and keep in mind, these guys
11 don't get to say where they're going to be housed;
12 they're put together -- they all got moved to various
13 places. Many of them got moved up to Santa Fe. And
14 they were held in segregation for a long time in
15 solitary confinement. You think the conditions in
16 blue pod were austere? In solitary confinement, with
17 no natural light, kind of like this courtroom, and
18 very little time in recreation, very limited social
19 interaction, very dulling to the senses. You will
20 hear from witnesses, killers, other Government
21 witnesses about the mental, emotional, and other
22 effects, the kind of paranoia that sets in when
23 you're in segregation for long periods of time.

24 And so Rudy was transferred. And he was
25 held in segregation something on the order of two

1 years for doing nothing. And so when the
2 Government -- so when the prosecutor tells you that
3 these guys weren't happy about it, that's true. Rudy
4 wasn't happy about being held in solitary confinement
5 for two years for doing nothing.

6 The way it worked -- and you're going to
7 hear evidence about exactly where each of these
8 individuals was held. Up at this facility in Santa
9 Fe, the folks who had been moved from Southern,
10 including Rudy, were able to communicate. They could
11 communicate through the vents in the cells, and
12 occasionally the guys who were allowed to go to rec
13 could communicate, they could send messages, called
14 kites, to one another.

15 And so rumors were swirling. Javier Molina
16 had died. Nobody knew exactly, in the beginning, who
17 was going to be charged, what the investigation was
18 showing, and there was a lot of gossip. There were a
19 lot of rumors about what had happened and what was
20 known. And that is where Rudy learned what other
21 people said happened. And you'll see this. You'll
22 be able to see where people were housed and who could
23 talk to each other.

24 And so months went by and Rudy learned
25 about the details of an agreement, an agreement he

1 wasn't part of.

2 After a number of months, in about November
3 of 2015 -- so the murder was in March of 2014 -- a
4 number of people were, in fact, charged, including
5 the killers, who you will hear from in this trial:
6 Montoya, Armenta, Rodriguez. And because Rudy
7 himself wasn't charged, all these guys started
8 spreading rumors that he was working with the
9 Government, that he was a rat. They knew that the
10 Government thought the murder weapons, the pieces
11 that were used, that Mario Rodriguez took -- or may
12 have taken; they didn't know -- came from Rudy's
13 walker, so they figured, this guy is a rat; this
14 information is coming from him. That's why he hasn't
15 been charged.

16 A number of people made statements after
17 the murder and up until this time. Nobody ever
18 implicated Rudy, but the Government had the theory
19 that this came from Rudy. And so everybody thought
20 this had to be how they knew it.

21 So after those individuals are charged, in
22 November of 2015, several weeks go by and Bryan Acee,
23 who you will hear from, from the FBI, went to see a
24 man named Billy Cordova. And you're going to hear
25 from Billy Cordova. He went to see him in

1 Albuquerque, and he threatened to charge him with
2 racketeering. He threatened to charge him with a
3 number of crimes. And you will hear about his
4 criminal history.

5 Mr. Cordova, Billy Cordova, of course, knew
6 all the same rumors and the same theories. He knew
7 that everybody thought Rudy was a rat, and he knew
8 that he could take advantage of that and try to make
9 a deal for himself by capitalizing on Rudy's fears.

10 And so he talked to Mr. Acee and he made a
11 decision to save his own hide and to try to get
12 information. And so the Government worked together,
13 and they were actually able to make arrangements to
14 put Mr. Cordova next to Rudy in segregation, where
15 Rudy had been for many months, where Rudy was alone,
16 paranoid, scared, hearing all these rumors. So he
17 puts him right next door. You'll see pictures of
18 these cells and the way they were able to
19 communicate.

20 During this time period, Rudy could only
21 talk to Billy Cordova. He was isolated. He could
22 talk to him through the vent. And so knowing that
23 Billy Cordova had a big mouth, which he had a
24 reputation for, and knowing that everybody thought
25 Rudy was a rat, that he was in danger, he tells

1 Cordova all this stuff he's heard. He takes credit
2 for knowing all this information. And he does do
3 more than that. You heard -- the prosecutor told you
4 that Rudy said nobody deserves a free pass on a
5 violation, and that everybody has to do their part.
6 That's when Rudy said these things. He said them to
7 Mr. Cordova because he was trying to save himself.
8 He was puffing. And you're going to hear a lot about
9 how people in prison take credit for things that they
10 didn't do. They do it to survive. So that's exactly
11 what was happening with Mr. Cordova in the cell next
12 to Rudy.

13 And like many of these other murderers, who
14 you will hear from, one after another in this case,
15 when the Government puts them on the stand, Billy
16 Cordova had everything to gain, and he had to exploit
17 Rudy in order to serve up some information to the
18 Government so he himself could avoid something on the
19 order of a life sentence.

20 So you're going to hear a lot from the
21 other killers in this case. They all had everything
22 to gain. They'll say anything to get a deal, get out
23 on the streets. So with every single one of them,
24 keep in mind that their lives depend on their
25 performance in this case. They have incentives to

1 say anything in order to get a deal.

2 So I'd just like to remind you that over
3 the last two days, we all sat here and you agreed
4 that you could judge the facts of Rudy's case
5 individually, and that's what you have to do. At the
6 end of this trial, you're going to decide that there
7 isn't evidence to find that Rudy agreed to anything,
8 that he committed these crimes; and we'll ask you to
9 find him not guilty. Thank you.

10 THE COURT: Thank you, Ms. Fox-Young.

11 Mr. Lowry, do you have an opening statement
12 for Mr. Baca?

13 MR. LOWRY: I do, Your Honor.

14 THE COURT: Mr. Lowry.

15 MR. LOWRY: May it please the Court.

16 THE COURT: Mr. Lowry.

17 MR. LOWRY: If it's not recorded, it didn't
18 happen. And that's a really important thing you need
19 to consider in this case: That when the evidence
20 hasn't been recorded, it hasn't happened. That's a
21 key component that you need to consider when you
22 listen to the evidence in this case. Because once
23 you carve out the law enforcement officers, who you
24 will hear testify, you'll find that almost the
25 entirety of this case rests upon the shoulders of men

1 who are murderers, thieves, drug dealers, and
2 wife-beaters. And as you've heard everybody say, the
3 credibility of these people leaves something to be
4 desired.

5 All of the people you will hear from in
6 this case -- they either want to get out of prison or
7 they don't want to go in. And there is a reason we
8 referred to these folks as con men, because they know
9 how to make the system work on their behalf. And
10 they know that in order to get out the prison door or
11 to avoid walking in it, they need to have a
12 compelling story to avoid the consequences of their
13 actions.

14 What Mr. Baca, Ms. Duncan, and I are going
15 to ask you to do throughout this trial is to listen
16 carefully to the evidence and watch these witnesses
17 testify, like we talked about in voir dire yesterday,
18 and pay attention. Look at body language, look at
19 their demeanor, and decide for yourselves. Did it
20 happen like they say? Is there any evidence to
21 corroborate what they're saying?

22 Now, we've talked about these cooperating
23 witnesses in generalities, but I want to talk about
24 one in specific, and you're going to hear from one of
25 the key witnesses in this case, a gentleman named

1 Eric Duran. And Eric Duran is a life-long criminal.
2 He went to prison in 1998 for evading arrest,
3 aggravated battery on a police officer. He actually
4 stole a police car, and the police officer had his
5 pistol drawn, trying to get him to stop, and he
6 wouldn't stop, and he fled. And he was arrested and
7 put in prison.

8 And while he was in prison, something
9 strange happened. Not strange, but unfortunately,
10 odd. You heard from Ms. Jacks, there are plenty of
11 people in the prison system that lack a moral
12 compass. Unfortunately, you even heard from Ms.
13 Armijo that sometimes the people that lack the moral
14 compass are the actual prison guards. They have to
15 watch the prison guards just as much as the inmates
16 to keep them from couriering in drugs. But when
17 Mr. Duran was in prison for aggravated battery on a
18 police officer, he had an incident one day where the
19 prison guards cuffed him behind his back, placed him
20 on the floor, and kicked his head in repeatedly.

21 So Mr. Duran knew that prison life is
22 violent. He knew that prison life is corrupt. And
23 he knew the prison life just isn't safe.

24 So he got out after that event, but it was
25 short-lived. He was out for less than a year, and

1 then he committed a murder and he went back to prison
2 in 2005 for second-degree murder and he was ordered
3 to spend 15 years in the prison system. You've seen
4 the pictures. It's not a glamorous place. And
5 Mr. Duran sat there year after year after year, and
6 he was in prison and he wanted nothing more than to
7 get out.

8 Now, Mr. Duran was worried about his own
9 safety. While he was sitting there in a prison cell,
10 he fashioned himself a steel shank, a rod of metal,
11 sharpened at the end, to protect himself. But
12 unfortunately, the guards found it in 2013. And
13 because he had a not-so-glamorous history with his
14 prison discipline, he was actually criminally
15 prosecuted for holding that shank. And he went to
16 court and was guilty, yet again, of another crime.
17 And the judge put a year on top of the 15-year
18 sentence he already had. And that happened in 2014.

19 Now, he was tired of living in prison.
20 It's not fun. It's not safe. And in the fall of
21 2014, he actually filed a civil lawsuit against the
22 Department of Corrections. And he complained
23 bitterly about the conditions he was living under.
24 He complained about the lack of phone calls. He
25 complained about the lack of basic human necessities,

1 like showers. He complained about the inability to
2 get out of his cell and get recreation time. And he
3 was furious about it. And in his civil lawsuit he
4 described these deplorable conditions as horrendous,
5 in his own handwriting. They are horrendous. And at
6 this time he's living -- in the end of 2014, the
7 beginning of 2015, he's living in the most secure
8 portion of the facility, Level 6, in Santa Fe at PNM.
9 The most austere conditions, the least amount of
10 liberty, and he's stuck. His civil case is going
11 nowhere and he wants to get out.

12 And then the guards come back in early
13 February, February 13, and they shake down his cell
14 because they're concerned about him. He's had
15 shanks. They know he's not a nice guy. And they
16 find another shank. And at this point, Mr. Duran is
17 thinking to himself: Here we go again. I don't want
18 to do another year on top of my 15 years on top of
19 the year. I want to get out.

20 Later that week, the prison staff comes by
21 and they shake down all their cells because they're
22 finding too many weapons in that portion of the
23 facility, and they take his property. And when they
24 take his property, he screams at the guard
25 obscenities I won't share with you, and he threatens

1 this guard with a very pointed threat. "I know where
2 you live," and he tells him his address. "I know
3 what car you drive." He reads him the license plate
4 to his car. And he says, "I'm going to get you."

5 Now, the guard wrote him up, like he
6 should. And at this point Mr. Duran knows, "Wow, my
7 goose is cooked."

8 The very next day he goes to the FBI office
9 in Santa Fe. They don't want to know about the
10 threat to the guard. They don't want to know about
11 the shank. They want to talk to him about what he
12 can barter with them to avoid the consequences of his
13 behavior. And he wanted to be there. No doubt about
14 it. I mean, he saw it. My plan A didn't work; my
15 civil case has sputtered out. I'm still stuck here.
16 I need to do something. I need to do something fast.

17 But what you'll hear when he takes the
18 stand and the testimony in this case is, even though
19 he knows that's his shot to get out, this interview
20 starts with a question to Mr. Duran, and the FBI
21 asked him something very simple, very clear, pretty
22 binary. "Are you a member of the SNM?"

23 And he tells the FBI a big fat lie. He
24 goes, "No, I've never really been a member of the
25 SNM. I don't know what you're talking about."

1 And they're scratching their heads.
2 They're going, like, "Wow, why is he here? We
3 thought we were investigating prison gang guys."

4 Then they asked him a second question.
5 They said, "Well, what's your motivation for coming
6 here?"

7 And he tells them something to the effect
8 of, "I just want to give back to the community. I
9 want to rehabilitate myself and give back to my
10 community, and I want to help you solve all kinds of
11 crimes. And if you could just get me out of here, I
12 could be a great undercover agent, because I know all
13 these dope dealers because after the correctional
14 officers kicked my head in, I made a lot of money."

15 Do you know what Mr. Duran did with that
16 money? He bought and sold, in his words, kilos of
17 cocaine. So he told them he'd be happy to work with
18 them. He could do whatever they wanted him to do.
19 He was a team player. He was ready to play ball.

20 And even though they had to have known that
21 he was lying to them, they signed him up. They said,
22 "Sounds like a deal." And they put Mr. Duran back in
23 prison to cooperate with them, to get information.

24 But Eric Duran wasn't worried about just
25 gathering information. He needed to create

1 information to make sure the doors to that facility
2 opened, to make sure that he could get out. And
3 that's a date I want you to think about and remember
4 throughout this case: February 19, 2015.

5 Now, all of those things I'm talking about,
6 they're all recorded. They happened. The three
7 guards that kicked his head in? They got convicted.
8 They went to prison. That happened. There is a
9 record of that.

10 The shank they found in his cell? That
11 happened. There is a record of that. He got it
12 right.

13 The yelling at the guard? He got
14 disciplinary action for that. There is a record.
15 It's there. You can read it.

16 But what happens next is, Mr. Duran does
17 the bidding of the Government. He collects evidence.
18 They give him a cell phone, they put on a body wire,
19 an electronic surveillance device, so he can record
20 anybody in the prison he wants to record, and only he
21 decides when to cut it on and when to cut it off. He
22 gets to decide who to record and when to record. And
23 over the course of that year, 2015, through March,
24 April, May, June, up through October, he records all
25 kinds of people. But he's a Wile E. Coyote. He

1 knows how to butter people up. And after he butters
2 them up, he cuts on the recorder.

3 Now, in exchange for all his work, his plan
4 B, to cooperate with the FBI, worked out like a
5 charm. Because after my client -- after Mr. Baca was
6 indicted in this case with his co-defendants that are
7 here in the courtroom, on December 3, 2015, the
8 benefits really started to come in.

9 You see, throughout that summer he got
10 little trinkets; he got commissary money; they gave
11 his girlfriend money to help with her kids. But
12 after December 3rd, the money started rolling in.
13 Not by the hundreds; by the thousands. And the
14 Department of Corrections patted him on the back and
15 said, "You were so helpful for us, we're going to let
16 you go. We're going to cut your prison sentence and
17 we're going to let you free early." And that's
18 exactly what Mr. Duran wanted, and he got it.

19 Let's come back to what he told the FBI on
20 February 20, 2015. What did he do with his new-found
21 freedom? Did he give back to the community? No.
22 During early spring, summer -- I believe it's 2017,
23 because he gets out in 2016 -- the FBI has helped him
24 out with relocating him to Vancouver, Washington, a
25 new place to live. And they set him up as being an

1 undercover agent there, so he could continue to
2 dabble in his drug world and pull people in for
3 prosecution.

4 But that wasn't quite good enough for
5 Mr. Duran, because the reality of it was: He wasn't
6 really a good guy. He couldn't give up the life.
7 And what you'll see and what's recorded and what you
8 can put your hands on is, during 2017, he gets
9 investigated by Child Protective Services because his
10 stepdaughter complained that he smacked her so hard
11 on the cheek her tooth became loose. And when she
12 told that to the teacher, they investigated him.

13 And it still amazes me that when they did
14 the investigation of him then, the folks in
15 Washington state found out that he had an outstanding
16 robbery charge in El Paso for an old robbery that he
17 had committed using a different name.

18 Now, because he was working so generously
19 with your government, calls were made and the
20 prosecutors down in El Paso decided, "Hey, we're
21 going to drop that charge. No biggie. We're going
22 to let it go." Great investment. Great job if you
23 can get it.

24 But later that year, in 2017, while the
25 police in Washington are scouting out a hotel where

1 prostitution is taking place, Mr. Duran pulls up to
2 the hotel with a prostitute in his car who hops out
3 and enters the hotel. And when the police converge
4 on his car to say, "Oh, we've got somebody else; this
5 is part of our sting operation," Mr. Duran was in the
6 car with a syringe full of a fluid. But the police
7 never got to figure out what the fluid was, because
8 he sprayed it all over the floorboard of the car.
9 And once again he confronted the police and said,
10 "Hey, hey, I'm with the FBI. I'm undercover."

11 And they said, "You know, that's all right,
12 you're one of us. Just don't do it again. It's
13 really not good to hang out with prostitutes. You're
14 on parole for all your crimes in New Mexico. What
15 are you doing? And why do you have a syringe?"

16 But what happens to Mr. Duran? Nothing. A
17 pat on the back, "Don't do it again."

18 Now, the folks -- and you can see these
19 records. They're there. They're contemporaneously
20 made. You can hold them in your hand. You can read
21 them.

22 Now, he goes on a couple weeks later --
23 this is November 11, 2017. The police get a call.
24 There are two guys passed out in the car. And the
25 police report, they follow up, and they look inside

1 this car, and they're, like, "Hmmm. This is odd.
2 These guys are passed out in this car. They don't
3 answer when we knock on the door. They're really
4 sound asleep."

5 But when they look inside, they see a
6 pistol. And at this point you're a police officer,
7 that's cause for concern. So they call for backup.
8 They get their reserves there, they get everybody in
9 place, and still they're blaring horns, they can't
10 get these guys to wake up. And they finally wake up,
11 and they say, "Put your hands up."

12 What does Mr. Duran do? He slides down in
13 his seat. And they're really worried, because he's
14 disappearing before their eyes. And they're trying
15 to figure out, what's he doing? What's he doing?
16 And he's hiding the pistol that he had with his feet
17 beneath the seat, hoping, praying that the police
18 don't find it. But they're good law enforcement
19 officers, and they find it and they arrest him.

20 And he gets charged, because the police
21 officers don't know and he doesn't tell them that
22 he's working with the FBI. But calls were made and,
23 lo and behold, the charges disappeared. The other
24 guy in the car gets tried and convicted, but not
25 Mr. Duran. He gets to go free.

1 Now, a couple of weeks later, he's a
2 passenger in a stolen car. And the car takes off
3 like a bat out of hell, and the police have to chase
4 him in hot pursuit. And when the driver of the car
5 wrecks the car, they get out of the car and flee.
6 Now, does that sound like somebody that wants to give
7 back to the community? And when they found him,
8 still nothing happened.

9 Now, our federal government wouldn't do
10 anything, but the New Mexico Parole Division finally
11 had enough and they were, like, "One of our parolees
12 who can't behave -- we've got to reel him back in,"
13 and they issued a warrant for his arrest.

14 But nobody had him. He was still free.
15 But finally, the next time the police found Mr. Duran
16 passed out in a different car in front of a
17 convenience store and they knocked on the window,
18 Mr. Duran knew he hadn't reported for parole. He
19 knew he'd been arrested for not only the pistol in
20 that car, but he actually had a handful of heroin,
21 too, and he knew he was in deep trouble.

22 So when the police knocked on the car
23 window the next time, he gave them a fake name and
24 tried to pretend like he was being harassed by the
25 police and pretended like he was calling his attorney

1 because he was being badgered by law enforcement
2 officers. And he wouldn't tell them who he was. And
3 they knew; they were smart police officers. They
4 knew something was up. So they had to have, you
5 know, an electronic gizmo to come up -- they could
6 run his fingerprints right there in the parking lot,
7 so they could find out who he was; because he
8 wouldn't tell them. And they found out who he was.
9 They found out he had an arrest warrant, and finally
10 Mr. Duran was arrested and brought back to New
11 Mexico.

12 Now, I tell you that because every bit of
13 that information was really recorded. You can put
14 your hands on it. But Mr. Duran will tell you
15 stories that you cannot corroborate, just like the
16 police officer who doesn't believe his fictitious
17 name and has to roll his fingerprints on a newfangled
18 gizmo to find the truth. And that's a pretty heavy
19 burden, and that's what we're going to ask you, the
20 jury, to be the newfangled gizmo. Is he telling the
21 truth? And that's what we'll spend the next weeks
22 doing.

23 Now, I tell you that just because it's not
24 going to be an easy task to separate what's really
25 the truth here. But I have a good idea.

1 But that's enough about Mr. Duran. I want
2 to tell you a little bit about Mr. Baca, our client.
3 We represent Mr. Baca, and we're happy to do that.
4 But Mr. Baca hasn't had the most glamorous life
5 either. He's lived for decades in the New Mexico
6 Department of Corrections. He went in as a very
7 young man, and we're not here to pull any strings.
8 You know, he joined a prison gang as a very young
9 man. Because you heard the story about Mr. Duran.
10 It's not a glamorous life. He joined the SNM. He
11 got tattooed. And you'll probably see pictures of
12 his tattoos here in a couple of minutes. But he has
13 "Syndicato de Nuevo Mexico" tattooed on his stomach.

14 But at the time, as my colleagues have
15 explained, everybody has their own community. And
16 when you live out in the free world, you can pick
17 your community. You can pick your community. You
18 can actually create your community, you know; and you
19 can say, "I want to be a mountain biker," or, "I want
20 to be an astronaut." But when you're in prison, your
21 options are limited, and it comes down to developing
22 a community inside those walls of the institution.

23 Now, Mr. Baca didn't always get along with
24 the prison administration. They shipped him out of
25 state for a long period of time. From about 1998 to

1 2008, he lived in Nevada.

2 And I just want to back up for a second,
3 because, I mean, it's important to understand. It
4 might not be our culture, it might not be your
5 culture. But you know, he needed the protection and
6 the bonds of friendship that that gang had to offer.
7 And over the years, like any village elder, he just
8 became somebody who knew the ropes, and people looked
9 up to him and went to him for advice. How do you
10 survive? What do you do in here to make it through
11 the day?

12 So prison he doesn't really get along with,
13 and they ship him out of state, and he comes back in
14 2008. And all of that -- there are records. You can
15 hold them. It really happened.

16 Then when he comes back to New Mexico in
17 2008, you know, things change. Like the rest of us
18 in our real lives, things change over a decade. And
19 his old associations at SNM weren't really a big-time
20 thing anymore. It wasn't even a unified gang. And
21 even the Government agents will tell that you it was
22 fractured. There were factions. There was
23 infighting. There was no unification. It was in
24 disarray, for lack of a better term. And because he
25 was older and because that's his community he

1 thought, I'm going to do what I can to see if I can
2 bring some structure, some organization, and some
3 bonds of unity within my community.

4 Now, it's an odd community. It's not your
5 community; it's not my community. It's a prison
6 community. But nobody wants to have their head
7 kicked in by a bunch of COs for no reason.

8 But here's the thing: He wasn't the man
9 for the time. Nobody really went along with his
10 ideas. And at this point in time, he's living in the
11 Southern New Mexico Correctional Facility, which is
12 right outside town here, and he's trying to say,
13 Look, we need to come together; we need to quit this
14 infighting; we need to get together; we need to be at
15 peace with each other," you know. And he was
16 rewarded with banishment. And the SNM members and
17 others wrote to the prison administration in 2011 and
18 they said, "We don't like this guy. Get him out of
19 here or we're going to kill him."

20 And they did. They took him out, they put
21 him in Level 6 in Santa Fe, because his attempts to
22 have a plan, his attempts to unite, his attempts to
23 bring people together failed. And you can read those
24 papers. And what they'll tell you is: SNM didn't
25 want him.

1 Now, after a couple of years of living in
2 solitary confinement at Level 6 in Santa Fe, he
3 earned the right to return to Southern in January of
4 2013. And he came back. And he was like, jeez.
5 Because you learn, in the New Mexico Department of
6 Corrections, that's sort of where they aggregate all
7 the alleged SNM members together. And it's not fair,
8 because not all of them are SNM members, but that's
9 where the majority of the validated guys are; at
10 least were in 2013.

11 But the same thing happened and in no short
12 order. Everybody that lives there says, "Get Baca
13 out of here. We don't like his ideas. We don't like
14 him." And in August of 2013 he was banished yet
15 again.

16 But the United States wants to say he's the
17 leader of the SNM. But that's two banishments in
18 three years, and he's back at Level 6. And again,
19 it's recorded. You can put your hands on it. You
20 can read the papers.

21 Now, he's living in Level 6 in 2014. He's
22 over 300 miles away from the Southern facility down
23 here with the Department of Corrections. And the
24 United States wants you to believe that he killed
25 Javier Molina, but he was nowhere near there. And

1 they want to say that they have their cooperating
2 witnesses that will testify about paperwork.

3 But here's the thing. You won't see any
4 paperwork in this case, and here's the real critical
5 point that I'm going to ask you to focus on and
6 listen to during this trial. The FBI put Mr. Duran
7 next to my client, Anthony Ray Baca, and recorded him
8 from October 22, 2015, to December 3, 2015. And in
9 all of those recordings you'll never hear him
10 confess. And they talked about all kinds of things.
11 And I mean, they talked about unpleasant things.
12 They talked about things that are going to make your
13 skin crawl, and I'll be honest with you about it.
14 But they never talked about him ordering a hit on
15 Javier Molina, even though Mr. Duran asked him about
16 it. And so what I'm saying is that if it's not
17 recorded, it didn't happen.

18 Now, that's enough on Mr. Molina, because
19 unlike everybody else in the room, Mr. Baca is also
20 alleged to have assaulted Julian Romero. And that's
21 another thing we need to consider. Because the only
22 evidence you're going to hear is the evidence of
23 individuals who want to avoid prison time. But what
24 the undisputed evidence will show you -- and they
25 will call in as a witness Gerald Archuleta, the

1 leader of the SNM, who will say he ordered a hit on
2 Julian Romero because when Julian Romero got out of
3 prison and Gerald Archuleta was in prison, Julian
4 Romero moved into his house and romanced his wife,
5 and they've lived together ever since.

6 And that just didn't really go over well
7 with somebody who's in prison, to have somebody who
8 you thought was your friend go out and steal your
9 wife. And at that time, it's undisputed, Gerald
10 Archuleta was the leader of the SNM. And you will
11 hear testimony that he was the meanest, maddest,
12 baddest guy around, you know. I mean, he was Bad,
13 Bad Leroy Brown.

14 And so he ordered Julian Romero to be
15 killed, and the evidence is going to be clear on
16 that. Mr. Baca didn't order Mr. Romero to be killed.
17 Gerald Archuleta did. And they're going to bring in
18 a witness, Lupe Urquizo, and he's going to take that
19 stand and he's going to try to implicate Mr. Baca.
20 But listen carefully and look at his behavior;
21 because he's going to tell you exactly what he told
22 law enforcement, that after Mr. Romero was assaulted,
23 did he call Mr. Baca? Did he write Mr. Baca a letter
24 and say, "Hey, pat me on the back, I did a great
25 job"?

1 Oh, no. He called Gerald Archuleta and
2 said, "Gerald, I pulled it off. We did it. We beat
3 the hell out of Julian Romero."

4 And according to Mr. Urquizo, you know what
5 Mr. Archuleta told him? "Damn it, I told you guys to
6 kill him. You only beat him up? What's wrong with
7 you guys?"

8 Now, I want to talk about the real big
9 picture here, the big-ticket item, the most salacious
10 charge: That Mr. Baca conspired to murder Gregg
11 Marcantel, the Secretary of Corrections. I want to
12 take you back to that first meeting that Eric Duran
13 had with the FBI. Because after he finishes the
14 introductory prefabrication -- or prevarication, I
15 meant to say, pardon me -- after he finished lying to
16 them to get in the door, they said, "Well, tell us
17 what you know."

18 And he said, "Jeez. I think there are
19 going to be all these murders."

20 And they asked him pointblank, "Is anybody
21 going to murder the Secretary of Corrections?"

22 And he said, "Oh, no. I don't know what
23 you're talking about."

24 But it put an idea in his head: Wow,
25 that's a cool thought. They're interested in it.

1 Maybe I should be interested in it.

2 And so they're going to talk about all
3 these letters that were miraculously intercepted by
4 Eric Duran. Mr. Duran went in, and you'll see, in
5 the handwriting of FBI agents, notes from the people
6 that he talked to. And what those notes say is:
7 "Eric Duran came up to me and asked me if I wanted to
8 hit Dwayne Santistevan."

9 So this idea didn't come from Mr. Baca.
10 This idea came from Eric Duran. And Eric Duran went
11 and talked people into writing letters and even said,
12 "Jeez, just give them to me. I'll make sure they get
13 out."

14 But he had his own mission, and he
15 collected the letters and gave them to law
16 enforcement. And they were like, "Man, you really
17 are our guy. You are our guy."

18 At the same time, there are some recordings
19 of this. But Eric Duran was the one that controlled
20 the on-and-off switch of that recorder. So it's
21 going to be really hard. But if you pay attention to
22 the details of these conversations, you can see it
23 and you can hear it for yourself. Because when
24 Robert Martinez and Roy Martinez are talking about
25 the letters they're drafting, they actually tell

1 Mr. Duran, "Just like we were talking about, just
2 like you said," but those conversations aren't
3 recorded. It will never happen. The only person
4 that had the on-off switch was the guy that fled from
5 the cops, the guy that dropped off prostitutes, the
6 guy that allegedly slapped his stepdaughter, the guy
7 that wanted to give back to our community. And
8 you're going to have to decide for yourself what
9 really happened. Because what did happen was, after
10 October 22nd, after spending a summer of creating
11 this crime, of sitting down with this case agent, and
12 telling him, "By God, Mr. Baca is eager, eager to
13 kill the Secretary of Corrections. He can't wait to
14 kill the Secretary of Corrections," they orchestrate
15 this entire thing, where Mr. Baca comes back from out
16 of state yet again, and they put him in a cell right
17 next to Mr. Duran so Mr. Duran can record him at his
18 leisure.

19 And over the course of the first couple of
20 days, you'll be able to see it. You'll have the
21 records, recording after recording, "Hey, let's talk
22 about this crime. Let's do this. Let's do this."

23 But what happens, he goes, "Hey, I've got a
24 great idea. Let's kill the Secretary of
25 Corrections."

1 And Mr. Baca says, "No. Why would we do
2 that? Why would I want to kill the Secretary of
3 Corrections? He's just a patsy. He's being
4 spoon-fed bullshit by all these guys that make our
5 life a living hell. He's a political hack. I have
6 no beef with him."

7 And then you'll see the recording stop for
8 hours. The hours turn into days. No recordings.
9 Nothing.

10 Now, the next time he cuts the recording
11 on, yeah, Mr. Baca is gung ho. I'm not going to deny
12 it. But the real question you're going to have to
13 struggle with is: Why is he gung ho? Is he gung ho
14 because some con artist wants a meal ticket out of
15 the prison, or is he gung ho because he wanted the
16 Secretary of Corrections dead? I would argue that
17 it's the former, and not the latter.

18 So we've got a long road ahead. We're
19 going to be in this together. And I applaud you for
20 doing your civic duty, for sitting with us and
21 engaging in what's going to be an intellectual and
22 factual expedition into what prison life is really
23 like. And it's not going to always be pretty. But
24 we're going to ask you, like we asked you in voir
25 dire, to judge these men against what the allegations

1 are, and not hold them responsible for their past
2 deeds, but to look at them as individuals in the eyes
3 of the law, and really pay attention to the details
4 of the facts of this case, and really look into the
5 eyes of these witnesses and assess their credibility
6 as human beings.

7 We're going to ask you to find Mr. Baca not
8 guilty. Thank you.

9 THE COURT: Thank you, Mr. Lowry.

10 All right, ladies and gentlemen. We're
11 going to take our first break today, this morning,
12 and I'm going to remind you of a few things that are
13 especially important. Until the trial is completed,
14 you're not to discuss this case with anyone, whether
15 it's members of your family, people involved in the
16 trial, or anyone else, and that includes your fellow
17 jurors. If anyone approaches you and tries to
18 discuss the trial with you, please let me know
19 immediately. Also, you must not read or listen to
20 any news reports of the trial. Again, don't get on
21 the internet and do any research for purposes of this
22 case.

23 And finally, remember that you must not
24 talk about anything with any person who is involved
25 in the trial, even if it doesn't have anything to do

1 with the trial.

2 If you need to speak with me, simply give a
3 note to one of the court security officers or Ms.
4 Standridge.

5 I'm probably going to repeat these a lot
6 today and then start trailing off as we get the trial
7 going, but do keep them in mind each time we take a
8 break, whether I repeat them or not.

9 All right. We'll be in recess for about 15
10 minutes. All rise.

11 (The jury left the courtroom.)

12 THE COURT: All right. We'll be in recess
13 for about -- Ms. Jacks?

14 MS. JACKS: Your Honor, I have something to
15 put on the record.

16 THE COURT: All right. Why don't we do it
17 after the break?

18 MS. FOX-YOUNG: I was just going to suggest
19 if we have a few minutes before the jury comes in to
20 make a record.

21 THE COURT: All right. Let's do that.

22 (Court was in recess.)
23
24
25


1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 12th day of March, 2018.

13
14 
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